

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

RAYMOND JAMES & ASSOCS., INC.,)	
)	
Plaintiff/Counter-Defendant,)	
)	
v.)	Case No. 2:18-cv-02104-JTF-tmp and
)	Case No. 2:21-cv-02433-JTF-tmp
50 NORTH FRONT ST. TN, LLC,)	
)	
Defendant/Counter-Plaintiff.)	

ORDER ON OUTSTANDING MOTIONS

Before the Court are several motions. First is Defendant/Counter-Plaintiff 50 North's Motion to Refer Defendant's Motion to Dismiss or, in the Alternative, Motion to Strike Allegations and Attached Exhibits from Plaintiff's Second Amended Complaint to the Magistrate Judge for a Report and Recommendation, filed on May 17, 2022. (ECF No. 419.) Second, is a Joint Motion for a Status Conference, filed on April 6, 2023. (ECF No. 437.) Third, is Plaintiff/Counter-Defendant Raymond James' Motion for Leave to File a Sur-Reply in Further Opposition to 50 North's Motion for Summary Judgment, filed on December 21, 2023. (ECF No. 485.) The Court will now address each motion in turn.

A. Motion to Refer Motion to Dismiss

The Court referred 50 North's Motion to Dismiss or, in the Alternative, Motion to Strike to the Chief Magistrate Judge in an Order Referring Motions, entered on April 19, 2023. (ECF No. 439.) Pursuant to the Order referring the Motion to the Chief Magistrate Judge, the Motion is terminated as **MOOT**.

B. Joint Motion for a Status Conference

In the Motion, the parties acknowledge that all pending matters before the Court at the time the Motion was filed were and are fully briefed. (ECF No. 437.) As such, the Court does not deem a Status Conference is necessary at this time. Accordingly, the Motion is **DENIED**.

C. Motion for Leave to File Sur-Reply

On November 6, 2023, 50 North filed a Motion for Summary Judgment. (ECF No. 471.) Raymond James filed a Response, (ECF No. 479), along with a Response to 50 North's Statement of Undisputed Material Facts, (ECF No. 480), on December 4, 2023, to which 50 North replied respectively, (ECF Nos. 483 & 484) on December 18, 2023. Thereafter, Raymond James filed a Motion for Leave to File a Sur-Reply in Further Opposition to 50 North's Motion for Summary Judgment, (ECF No. 485). 50 North filed a Response in opposition on December 21, 2023. (ECF No. 486.)

In the Motion, Raymond James contends it "believes a substantive Sur-Reply will not only assist the Court in ruling on 50 North's Motion for Summary Judgment, but also highlight for the Court grounds under which it may *sua sponte* enter summary judgment against 50 North under F.R.C.P. 56(f)." (ECF No. 485.) In its Response, 50 North argues that "[t]he local rules of the Court only allow for the filing of a summary judgment motion and brief, a response in opposition, and a final reply. (ECF No. 486, 1.) The Sixth Circuit has explained that "[a]lthough the Federal Rules of Civil Procedure do not expressly permit the filing of sur-replies, such filings may be allowed in the appropriate circumstances, especially '[w]hen new submissions and/or arguments are included in a reply brief, and a nonmovant's ability to respond to the new evidence has been vitiated.'" *Key v. Shelby Cnty.*, 551 F. App'x 262, 265 (6th Cir. 2014) (quoting *Seay v. Tenn. Valley Auth.*, 339 F.3d 454, 481 (6th Cir. 2003). Because Raymond James does not point the

Court to any new submissions and/or arguments included in 50 North's reply brief, Raymond James' request does present an appropriate circumstance necessary as grounds to allow it to respond to new evidence, if any, contained in 50 North's Reply. Therefore, the Motion for Leave to File a Sur-Reply in Further Opposition to 50 North's Motion for Summary Judgment is **DENIED.**

IT IS SO ORDERED this 19th day of April 2024.

s/John T. Fowlkes, Jr.
JOHN T. FOWLKES, JR.
UNITED STATES DISTRICT JUDGE